THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY

W.P.No.14082 of 1999

Date:31.01.2006

Capt. A.N.Azmi.

----------Petitioner

Indian Airlines Limited.

----------Respondent

ORDER:

The petitioner challenges the action of the respondent in deducting a sum of Rs.71,867/- from his salary and seeks a consequential direction to the respondent to refund the same.

The facts, that led to the filing of this Writ Petition, may, briefly, be stated as under:

The petitioner joined the Indian Air Force in the year 1971 and after serving for about 13 years, he took premature retirement. Thereafter, he joined Vayudoot, as a Trainee Captain in November 1985. He became a full-fledged Captain in the year 1986 and was promoted as Manager, with effect from 15.04.1988. In 1991, the petitioner was directed to officiate as Regional Head of Andhra Pradesh and Karnataka regions of Vayudoot. In March 1993, Vayudoot was merged with the Indian Air Lines. In October 1993, the States of Tamilnadu and Kerala were added to the southern region and the petitioner was required to look after the same.

In the year 1996, steps were taken for merger of services of the employees, who were hitherto associated with Vayudoot in the Indian Airlines. After raising certain initial objections, the petitioner ultimately gave his option and thereafter, became part of Indian Airlines. On 04.03.1996, the petitioner was kept in-charge of Eastern Region and was directed to officiate as Deputy General

Manager. The terms, subject to which he has to function, in that capacity, were also indicated, within two months, thereafter. On 08.08.1996, the respondent has withdrawn the leased accommodation of the petitioner at Hyderabad and asked him to avail the accommodation at Calcutta for a rent not exceeding Rs.4,500/- per month. The petitioner was also required to surrender the official car, which was kept, at his disposal. On 07.11.1997, the respondent issued proceedings, seeking to deduct a sum of Rs.71,867/- from the salary of the petitioner at the rate of Rs.10,000/- per month. Out of this, Rs.45,800/- was towards the recovery of Leased Accommodation between 01.12.1994 and 09.05.1996, and Rs.26,067/- was towards the opportunity cost for using the official car, beyond 08.08.1996.

The petitioner states that the various orders issued by the respondent disclose that he was permitted to avail the official accommodation at a rent, not exceeding Rs.4,500/- per month, till the proceedings, dated 07.11.1997, were issued and that there was no justification for it, in deducting the differential amount. As regards the opportunity cost for using the official car, the petitioner submits that as per a policy decision, the respondent offered the official cars to various employees, for purchase, after allowing depreciation, and that such a facility was not extended to him. He contends that the action of the respondent is *mala fide*.

Sri M.Ravindranath Reddy, the learned counsel for the petitioner had strenuously contended that the respondent was not justified in effecting deductions as indicated above. He has drawn the attention of this Court to various proceedings that have a bearing on the subject matter.

The respondent filed a counter affidavit. The various service particulars referred to above are not denied. Its action is sought to be justified, on the ground that the petitioner was entitled for House Rent Allowance at the rate of Rs.1,000/- per month and the differential amount, for the period referred to above was sought to be deducted. It is further contended that once the petitioner was required to surrender the car through proceedings, dated

08.08.1996, there was no justification for him to use it, and as such, he is liable to pay a sum of Rs.26,067/-.

Sri K.Srinivasa Murthy, the learned Standing Counsel for the respondent, contends that there was some ambiguity in the orders that were issued earlier, while posting the petitioner as in-charge of Eastern Region, and the impugned order came to be issued in that regard. After drawing attention of this Court to certain proceedings, he urges that the petitioner was kept informed of all the developments from time to time, and that no exception can be taken to the impugned action.

The controversy in this Writ Petition is about the deductions made by the respondent from the salary of the petitioner, towards difference of the amount payable towards rent for the accommodation provided to the petitioner as well as the opportunity cost for using the official car by the petitioner beyond 08.08.1996.

As regards the deduction of amount towards Leased Accommodation between 01.12.1994 and 09.05.1996, it is to be noted that the respondent issued order, dated 04.03.1996, posting the petitioner as Deputy General Manger (Operations) and directing him to function at Regional Office. By that time, he was functioning as in-charge of the Southern Region, with his residence and office, at Hyderabad. Within two months thereafter, the respondent issued memorandum, dated 08.05.1996, indicating some of the conditions, under which the petitioner was required to function. One of the conditions was that he will be allowed to retain the Company official accommodation at Hyderabd with a rent not exceeding Rs.4,500/- per month. It means that the petitioner was already availing that accommodation. He was required to make his own arrangements as regards his stay at Calcutta. Through letter, dated 09.05.1997, the respondent intended to clarify certain ambiguities in the order, dated 04.03.1996. Item (ii) thereof related to House Rent Allowance/Company's Leased Accommodation, which reads as under:

"ii) House Rent Allowance/Company's Leased Accommodation:

a. *From 1.12.94 to 9.5.1996, he would be entitled for House Rent Allowance.*

b. *From 10.5.96 to 8.8.96, he will be provided with leased accommodation at Hyderabad.*

c. *From 9.8.96 to 18.2.97, he is to be provided with leased accommodation at Calcutta. Alternatively, he could be paid HRA, if leased accommodation is not availed of at Calcutta."*

From this, it is evident that for different spells of stay of the petitioner at Hyderabad and Calcutta, the respondent intended to pay the House Rent Allowance or provide Leased Accommodation, as the case may be. The House Rent Allowance, at the relevant point of time, is said to be about Rs.1,000/-. As pointed out above, the leased accommodation was at a rent, not exceeding Rs.4,500/-. It is not pointed out that the petitioner availed the Company leased accommodation, during the period, for which he was entitled for House Rent Allowance alone. The indication is otherwise. Therefore, the respondent was not justified in directing that the petitioner was entitled for House Rent Allowance alone from 01.12.1995 to 09.05.1996, once it has permitted the petitioner to avail the leased accommodation duly specifying the limits.

At no point of time, the respondent has required the petitioner either to desist from availing the official accommodation or from claiming House Rent Allowance at any particular place. The service conditions and the stipulations thereof vis-à-vis the petitioner were so vague, that nothing is discernible as to his entitlement from time to time. The respondent did not object to the petitioner, when he claimed the rental amount or House Rent Allowance, as the case may be, from time to time. In the name of clarification of earlier state of affairs, the respondent is not entitled to make deductions. Therefore, the respondent is liable to refund the amount that was deducted from the salary of the petitioner, towards the difference of House Rent Allowance or the rent for leased accommodation, as the case may be, which was shown as Rs.45,800/-.

The deduction effected from the salary of the petitioner towards opportunity cost for using the company car, however, stands on a different footing. The petitioner was provided with an official car. Through proceedings, dated 08.08.1996, he was required surrender the car. Therefore, he was under obligation to surrender it forthwith, unless any superior authority or any Court had stayed it. The question as to whether the petitioner was discriminated, in the matter of the cars of the respondent being offered for sale, to the employees, is altogether a different one, and has nothing to do with the present controversy. The petitioner does not dispute that he has used the official car beyond 08.08.1996 and the charges therefore, till 07.11.1997, aggregate to Rs.26,067/-. This Court does not find any basis to find fault with the deduction of the said amount.

Hence, the Writ Petition is partly allowed, declaring that the respondent was not entitled to deduct a sum of Rs.45,800/- from the salary of the petitioner, towards the difference of House Rent Allowance and rent for Leased Accommodation, for the period between 01.12.1994 and 09.05.1996. The same shall be refunded to the petitioner, within a period of eight (8) weeks from the date of receipt of a copy of this order. If the amount remains unpaid thereafter, it shall carry interest at the rate of 12% per annum, from 01.04.2006 on wards. There shall be no order as to costs.

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(L.NARASIMHA REDDY,J)

Date: 31.01.2006

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